

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 564 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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RAJAK SULEMAN SANDHI

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for the appellant

Mr.S.R.Divetia, LAPP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 21/01/97

ORAL JUDGEMENT (N.J.Pandya,J.)

The accused-appellant was convicted for an offence under Sec.302 I.P.C. by the learned Additional Sessions Judge, Rajkot at Gondal and was sentenced to R.I. for life and fine of Rs.1,000/- and in default S.I. for six months, by judgment dated 23rd June 1989. This was the outcome of Sessions case No.36 of 1989 of the said Court, where the incident reported was to the effect that on 12th August 1987 at about 9.30 p.m. the accused and the deceased, who were police constables in the State Police Force, at the relevant time, were working with Lodhika Police Station of Rajkot District (Rural) and the accused gave knife blow to the deceased just outside the police station. He was, therefore, charged for an offence under Sec.302, as also for an offence under Sec.135 of Bombay Police Act.

2. The prosecution is mainly relying on the witnesses, who belong to the police force itself and

naturally, it being a police station, all of them were present and came on the scene immediately on hearing the shouts. The first witness, in this regard, is Valjibhai Gandabhai, Head Constable of Lodhika Police Station at the relevant time, Exh.19, page 45. As per his version, the deceased and the accused were quarelling about the alleged immoral activity of the deceased, as he was calling girls at his place and this was objected to by the accused.

3. On the night of the incident, before it happened, the accused had gone to the police station to lodge a verbal complaint about the behavior of the deceased with the head of the police station. As p.w.1 was incharge at the relevant time, he made a grievance with him and in response to it, the accused was called by said witness Valjibhai. On accused coming there, discussion started, which soon resulted into a heated debate and degenerated into a verbal brawl. The response of the deceased, as per the say of the witness Valjibhai was very brazen namely he maintained that he is calling woman at his place, he would continue to call them and might even decide to keep them. The accused, realising the futility, went out saying that he will contact DSP or will find his own solution to the problem. This has been so stated by witness p.w.1 at para 1, page 46 of the paper book. More or less, on the same line is the testimony of another constable Jaysingh Pathuji p.w.3, exh.27 page 70. The response of the deceased is repeated almost in the same words by this witness also. No doubt, the dying declaration of the deceased came to be recorded by the Executive Magistrate at exh.44, page 118 of the paper book where the deceased has come out with a story of his keeping a house-maid only because his wife was not keeping well. This statement was recorded at about 2.30 AM. The depositions of said two witnesses who are also to an extent eye witnesses, as per the case of the prosecution run counter to the contents of the dying declaration. The story thus, brought about is that there was a dispute simmering between the accused and the deceased and it related to calling a woman and thus creating problem in the neighbourhood of the police line. The accused and the deceased both were staying in that very police line. In this background, if there is a tussle between the two about the alleged activity of the deceased, it is quite understandable. The response of the deceased being the one as noted above, as per the case of the prosecution itself, obviously, the appellant has reached to a stage in the background of the said dispute, where as per the alternative submission made by L.A. Mr.Shethna, appearing for the accused-appellant,

the situation contemplated by sub-sec.1 of Sec.300 could be brought about. In view of the said response, according to Mr.Shethna, the accused can be said to have been deprived of the power of self control by grave and sudden provocation. We accept this submission and therefore, alter the conviction from one under Secd.302 IPC to Sec. 304 Part I, IPC.

4. In the result, the appeal is partly allowed. The order of conviction under Sec.302 awarded by the trial Court in Sessions Case No.36 of 1987 is altered to one under Sec.304 Part I and so far as the sentence is concerned, the accused-appellant is sentenced to undergo 10 years' R.I. in place of life imprisonment and fine of Rs.1,000/- awarded by the trial Court. Whatever sentence the accused-appellant has undergone as an undertrial prisoner as well as as a convict, should be taken into account while computing the period of 10 years and the accused-appellant shall undergo the balance sentence if any, as per this judgment.

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